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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FOO/146132

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 21, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on January 15, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner's FoodShare eligibility as household income increased.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: J. Lamonte

Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner was sent a Notice of Decision dated December 17, 2012 that informed her that FoodShare benefits would be ending January 1, 2013.

3. Agency received wage information that indicated that the income for Petitioner's household, including her daughter's income, needed to be redetermined for FoodShare purposes. The agency sought verification and pay stubs were provided.
4. The agency determined Petitioner's household income to be \$3890.15; consisting of \$1173 of Petitioner's unearned income and her daughter's earned income of \$2717.15. (This is actually lower than the income I determined from the wage information provided in the December 17, 2012 Notice of Decision; using a 2.3 multiplier from the earned income I determined income to be approximately \$4079.)
5. The agency determined Petitioner's household size to be 4; Petitioner, two daughters and a grandchild.
6. Petitioner was credited with shelter costs of \$1665.32 and excess medical expenses of \$244.85, the standard deduction of \$160 and earned income deductions for the daughters.

### DISCUSSION

The starting point for determination of FoodShare eligibility and allotment levels begins with the determination of who must be included in the FoodShare household. FoodShare regulations require that parents and children under the age of 22 included in the same household:

#### **3.3.1.3 Relationship Rules**

*7 CFR 273.1(b) (1)*

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, **and**
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

...

*FoodShare Wisconsin Handbook (FSH), §3.3.1.3.*

Once household composition is determined FoodShare eligibility and the allotment level for an eligible household is computed as follows.

A household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

Once a household passes the gross income test the following deductions are applied ( *FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$160 per month for a household of 4 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction - the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$459.00 on

the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member.  
*FSH, §§ 4.6.7.1 and 8.1.3.*

At the hearing Petitioner indicated that there have been changes to her daughters' employment and income. Changes reported in one month are effective in the month after the month of the report of the change. *FSH, §6.1.3.3.* Petitioner's case was open with continued benefits thus these changes may affect February 2013 benefits. Those changes could not, however, affect benefits earlier than that.

This still leaves the question as to whether the agency correctly discontinued benefits. The available evidence is not sufficient to be conclusive as to that discontinuance. The ages of the daughters is not in the record so it is not clear how they are included in the household, i.e., by age or the 'purchase/prepare' test. Further, the check stubs are not available and my calculations of income do not match the agency's although my calculations were higher. I am, therefore, remanding this with instructions to the agency to redetermine the household size and income as of the December 2012 verifications for January 2013 benefits. A new Notice of Decision must be sent to Petitioner with the results of that determination; in fact, the agency might wish to send a manual notice so as to better explain its results.

Petitioner should be aware that I suspect that the redetermination will not change results here so she should be careful about using all of the benefits allocated to her until this is resolved as it may cause an overpayment.

### **CONCLUSIONS OF LAW**

That the evidence is not sufficient to demonstrate that Petitioner's daughters should be included as part of Petitioner's household nor to demonstrate that the income of Petitioner's daughters' has been correctly determined; thus the evidence is insufficient to demonstrate that Petitioner's FoodShare benefits were correctly discontinued for January 1, 2013.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency with instructions to take the administrative steps necessary to redetermine Petitioner's household composition and to redetermine and document its determination of household income. If that redetermination confirms household composition and that income was in excess of income limits as prospectively determined for January 2013, the agency may close Petitioner's FoodShare case for January 2013 provided it issues a new Notice of Decision explaining its actions.

If that redetermination does not confirm household composition and income, the agency must issue a Notice of Decision as to the effect of the redetermination.

These steps must be concluded within 10 days of the date of this order.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

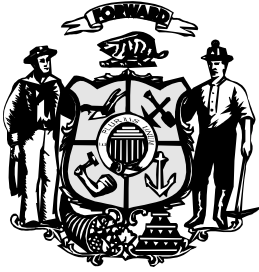
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of February, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 19, 2013.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability